

APPELLATE CIVIL.

Before Mr. Justice Madhavan Nair and Mr. Justice Jackson.

DAMARAJU SIVARAMAMURTHI (SECOND DEFENDANT),
APPELLANT,

1934,
January 16.

v.

ATYAM VENKAYYA AND FIVE OTHERS (PLAINTIFF AND
NIL), RESPONDENTS.*

*Hindu Law—Joint family—Purchaser of an undivided share of
a co-parcener—If entitled to past mesne profits and when.*

In order to entitle a purchaser of an undivided share of a co-parcener in a joint Hindu family to get a decree for past mesne profits it is not necessary to show that the properties of the family had been divided by metes and bounds. It is enough if a division in status is established among the members of the family

Maharaja of Bobbili v. Venkataramanjulu Naidu, (1914)
I.L.R. 39 Mad. 265, distinguished.

APPEAL against the decree of the Court of the Subordinate Judge of Ellore in Original Suit No. 117 of 1922.

P. Somasundaram for appellant.

P. Satyanarayana Rao for respondents.

The JUDGMENT of the Court was delivered by MADHAVAN NAIR J.—This is an appeal by the second defendant against the revised judgment of the learned Subordinate Judge after remand in Original Suit No. 117 of 1922. The only point argued relates to the decree passed against the second defendant for the past mesne profits. The second defendant is the son of the first defendant

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who is now dead and defendants 3 and 4 are his uncles, being the brothers of the first defendant. The plaintiff has become the purchaser of the one-third undivided share belonging to the first defendant in the suit items.

The appellant says that no decree should have been passed against him as he and his father were not in possession of the family properties and as the profits of the properties were all along being enjoyed by defendants 3 and 4. The learned Judge did not accept this view of the case. Defendants 3 and 4 say that the profits of the properties were being enjoyed in shares by the defendants. The leases of the properties were sometimes given by the third defendant and sometimes by the fourth but the profits were enjoyed by all the brothers each taking his share. How they were enjoying the properties is detailed in the evidence of the third defendant. The written statement of one of the tenants (see the written statement of the eleventh defendant) also supports this version. Mr. Somasundaram emphasises that part of the plaintiff's evidence wherein he says that "the profits are being enjoyed by defendants 3 and 4." This no doubt at first sight would support the case of the second defendant, but we have to take this evidence along with the evidence of the third and the other defendants, and we have also to remember that the plaintiff is a stranger and is hardly likely to know the details about the actual enjoyment of the produce. The evidence of defendants 3 and 4 shows that they collected the produce with respect to certain lands and that the brothers divided it in shares. Read in this light the plaintiff's evidence does not hurt his case. It

is also unlikely that the first and second defendants would have given up their share of the produce of the family lands. The learned Judge has accepted the evidence of the third and fourth witnesses for the defendants. We see no reason to reject their evidence on this question.

Another point argued by the appellant is that since the family of defendants 1 to 4 is admittedly undivided the purchaser of an undivided share of its properties is not entitled to claim past mesne profits. Reliance is placed on *Maharaja of Bobbili v. Venkataramanjulu Naidu*(1), but that case is distinguishable, because in this case the evidence shows that, though the properties are not divided by metes and bounds, the brothers were enjoying them in definite shares and were living also separately. A division in status is thus established between the members. In such a case a decree for mesne profits may be given to the purchaser of the undivided share ; see *Palaniakkal v. Ramana Koundan*(2) and also the observations on the point in *Sheodan Kurmi v. Balkaran Kurmi*(3).

We overrule both the points urged by the appellant's learned Counsel and dismiss this appeal with costs.

G.R.

(1) (1914) I.L.R. 39 Mad. 265.

(2) (1910) 7 I.C. 695.

(3) (1920) I.L.R. 43 All. 193, 195.